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1772

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/630,377

Applicant(s)

D'AMATO, GIANFRANCO

Examiner

Christopher P. Bruenjes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-13 and 15-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-13 and 15-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

1. The drawings were received on May 15, 2006. These drawings are acceptable.

WITHDRAWN REJECTIONS

2. The objections to the drawings and the abstract of record in the Office Action mailed February 7, 2006, Pages 4-6 Paragraphs 4-6, have been withdrawn due to Applicant's amendments in the Paper filed May 15, 2006.

3. The 35 U.S.C. 112 rejections of claims 1-43 of record in the Office Action mailed February 7, 2006, Pages 6-10 Paragraph 8, have been withdrawn due to Applicant's amendments in the Paper filed May 15, 2006.

Double Patenting

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4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 2-13, 15-26 and 30-43 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-33 of copending Application No. 10/630,378. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of application '378 teach all that is claimed in the rejected claims of the pending application. Regarding claims 40 and 4-8, claim 29 of application '378 teaches a container having

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all of the limitations of claim 40 and 4-7 of the current application in combination. Note at least one layer is taught by at least two layers because the limitation "at least one layer" includes any number of layers. Claims 2 and 9-10 are taught by claims 13 and 31 of application '378. Claim 3 is taught by claim 12 of '378. Claim 8 is taught by claim 5 of '378. Claim 11 is taught by claim 16 of '378. Regarding claim 12, the limitation that the two or more layers are coextruded is a method limitation and therefore receives little patentable weight in an article claim, since the final product is a laminated structure which is taught by '378 in claim 16. Also it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to form the multilayered container of '378 by lamination and/or coextrusion since both methods are notoriously well-known methods in the art for forming multilayered containers and that the particular method chosen is selected based on the intended end result and intended processing of the article. Regarding claims 13-26, these limitations are taught in claims 2-4, 6-11, 14-15, and 17-19 of '378 respectively. Claims 30-31 are taught by claim 14 of '378. The limitations of claims 32-43 are taught by claims 21-30 and 32-33 of '378 respectively. Note the claims of the two applications are not conflicting because the independent claim

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of '378 requires that the container be collapsible and a specific combination of limitations in which the claims of '377 do not require even though the claims of '377 teach all of those limitations individually.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 3-7, 13, 18-19, 26-28, 32-33, 38-41, and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Benson (USPN 1,654,318).

Regarding claim 40, Benson anticipates a container such as a paper drinking cup, which is for receiving food (see title of invention). The container has a wall comprising at least one layer (reference number 1, Figure 4). The container comprises a withdrawal opening with a bent opening edge (reference number 3,

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Figure 4) and being closed at its end opposite the withdrawal opening (reference number 4, Figure 4). The container wall is formed from a two-dimensional blank which is connected with itself for forming a continuous container wall (p.1, lines 92-99). The container wall is at least partially formed from a transparent material (p.1, lines 49-55). The material is liquid or fluid tight since it is used to contain a liquid material. The material is shaped for forming the container at both ends (Figure 4) and is dimensionally stable after having been shaped, because the container retains its shape after being shaped. The container is stable at least in the temperature range of -50°C to +120°C, since the container is formed of paper stock for the purpose of forming a drinking cup. Note the limitation "stable at least in the temperature range of -50°C to +120°C" given its broadest reasonable interpretation is an article that is stable within this range. The limitation does not require that the article be stable at every temperature within that range.

Regarding claim 3, a coat of lacquer is provided on one or both sides of the layer (p.2, lines 18-21). Regarding claim 4, the container is made of paper stock to form a drinking cup from an unshaped blank, therefore the container wall is inherently flexible. Regarding claim 5, the connection of the blank with itself is prepared by heat and/or pressure because the edges

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glued together are brought together with some amount of pressure in order to allow the glue to bond. Regarding claim 6, the connection of the blank with itself is formed along an overlap region extending in the longitudinal direction of the container (reference number S, Figure 1). Regarding claim 7, the opening edge is bent or rolled without the material changing its properties, since the material is still paper stock and transparent. Regarding claim 13, the unshaped blank is strictly two-dimensional in that it is two-dimensional (p.1, lines 21-99). Regarding claim 14, the material forming the container is paper stock, which is at least partially mechanically resistant to puncturing, so it is mechanically resistant, as claimed. Regarding claim 18, the layer taught in Benson, which would be an inner layer and/or outer layer of the container when the container is formed of one layer, is formed as a connection layer at least in the overlap region (Figure 1). Regarding claim 19, the edges of the layer are fluid tight, since the container is used to contain liquids, which is a fluid. Regarding claim 26, the closed end of the container is formed by connecting lower end sections of the wall via the bottom insert. Note the fact that even though the connecting of the lower end sections requires the bottom insert, the lower end sections are still connected to form the closed end. Regarding claims 27-28,

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the closed end comprises a bottom insert (reference number 4, Figure 4) formed from the same stock as the sidewall, therefore, the bottom insert is transparent. Regarding claim 32, paper stock formed into a paper cup inherently has some impact and/or puncture resistance. Note the claim does not specify an amount of impact and/or puncture resistance. Regarding claim 33, the container has a circular cross-section (Figure 3). Regarding claim 38, the opening edge is bent to the outside at an angle much greater than 90° to the rest of the container wall (reference number 3, Figure 4). Regarding claim 39, the opening is partially and/or in places continuously formed (p.1, lines 59-62). Regarding claim 41, the container can be stack and unstacked (p.1, lines 59-62). Regarding claim 43, a blank is taught for the manufacture of a container according to claim 1 (p.1, lines 91-99).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the

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art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 2, 8-12, 15-16, 23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson in view of Suzuki (USPN 4,187,768).

Regarding claims 2 and 8-10, Benson teaches all that is claimed in claim 40, but fails to teach forming the container wall from more than one layer or using polymeric material to form one or more of those additional layers. However, Suzuki teaches that thermoplastic films such as polyethylene, polypropylene or the like are added to the inner and/or outer wall surfaces of paper drinking cups in order to render the paper container water-resistant (see abstract and col.1, 1.22-26). Note that polyethylene and polypropylene films are transparent films, therefore the wall would comprise two or more

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layers, each being transparent. One of ordinary skill in the art would have recognized that thermoplastic films such as polyethylene, polypropylene, or the like are added to the inner and outer surfaces of a traditional paper drinking cup in order to improve the water resistance of the container, as taught by Suzuki.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add a inner and outer layer of polyethylene, polypropylene, or the like to the paper drinking cup of Benson, in order to improve the water resistance of the cup, as taught by Suzuki.

Regarding claims 11, 15, and 25, the container taught by the combination of Benson and Suzuki includes three layers that are laminated and would therefore form a permanent junction.

Regarding claim 12, the limitation that the layers are coextruded is given little patentable weight in an article claim because the layers would have the same structure in that they would be laminated layers regardless of whether co extrusion was used to form the lamination. Furthermore, it is well known in the art to form multi layered containers using coextrusion.

Regarding claim 16, the container taught by the combination of Benson and Suzuki includes the paper stock layer of Benson as

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the central layer. Paper stock has some elastic properties and is permanently ductile and dimensionally stable after shaping.

Regarding claim 23, Suzuki goes on to teach that polyethylene and polypropylene are ultrasonic absorbent and therefore the overlap region can be formed by ultrasonic welding the edges of the blank together (col.3, l.23-32).

6. Claims 17, 20-22, 24, and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson in view of Suzuki and further in view of McLaughlin (USPN 6,210,766).

Benson and Suzuki teach a three layered blank having a polyethylene or polypropylene inner and outer layer and a central transparent paper stock layer as shown above with regards to claims 2, 8-12, 15-16, 23, and 25, but fail to teach at least one of the layers is gas tight. However, McLaughlin teaches that it is well known in the art to add vinyl alcohol layer, which renders a container gas tight, depending on the intended end result of the container (col.2, l.41-50). One of ordinary skill in the art would have recognized that Benson, Suzuki and McLaughlin are analogous insofar as all three references are concerned with forming a container form a two-dimensional blank. It would have been obvious to one having ordinary skill in the art to add a gas tight layer to a fluid

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containing container formed from a two-dimensional blank depending on the intended end properties of the container.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add a gas tight layer to the container of Benson and Suzuki in order to provide the container with gas tight properties, which is a well known desire in forming containers from two-dimensional blanks, as taught by McLaughlin.

Regarding claims 20, 22, and 34-35, Benson and Suzuki teach a three layered blank having a polyethylene or polypropylene inner and outer layer and a central transparent paper stock layer as shown above with regards to claims 2, 8-12, 15-16, 23, and 25, but fail to teach providing at least one of the layers with a print. However, McLaughlin teaches for providing a container with decoration and information for the user printing, especially in the form of a hologram or three dimensional effects is printed on one of the inner layers of the laminate. One of ordinary skill in the art would have recognized that Benson, Suzuki and McLaughlin are analogous insofar as all three references are concerned with forming a container from a two-dimensional blank. It would have been obvious to one having ordinary skill in the art to provide a container with printing in the form of a hologram or three dimensional effects in order

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to provide that container with decoration and/or information for the user of the container.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add printing such as a hologram or three dimensional effects to one of the inner layers of the container of Benson and Suzuki in order to provide the container with decoration and/or information for the user of the container, as taught by McLaughlin.

Regarding claim 21, because the print is present on an interior layer of the container the print is obviously resistant to rubbing.

Regarding claim 24, because the print is present on an interior layer of the container the print is obviously printed before the layers are laminated.

Regarding claim 36, the printing does not cover the entire side wall of the container, so therefore, the part of the sidewall not possessing the printing would be a control window left open on the wall for viewing the inside of the container, since the layers forming the wall are all transparent as shown above with regard to Benson and Suzuki.

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7. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benson in view of Meyer (USPN 2,170,060).

Benson teaches all that is claimed in claim 1 as shown above but fails to teach that the material forming the container sidewall is not only transparent but also colored. However, Meyer teaches that is well known in the art to add color effects to at least the borders and edges of transparent containers in order to provide an enhanced decorative appeal to the transparent container (p.1, left hand column, lines 1-16). One of ordinary skill in the art would have recognized that Benson and Meyer are analogous insofar as both references are concerned with forming transparent containers from two-dimensional blanks. Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add color effects to at least the borders and edges of transparent containers formed from two dimensional blanks in order to provide an enhanced decorative appeal to the container, as taught by Meyer.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add color to the transparent container of Benson in order to enhance the decorative appeal of the container, as taught by Meyer.

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8. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benson in view of Suzuki and McLaughlin (USPN 6,210,766) as applied to claim 20 and further in view of Flood (USPN 2,226,340).

Benson, Suzuki, and McLaughlin teaches all that is claimed in claim 20 as shown above, but fail to teach printing on the outer side of the container. However, Flood teaches that it is well known in the art to print on the outer surface of a paper container in order to provide the user of the container with information such as scale means (p.1, left hand column, lines 10-34). One of ordinary skill in the art would have recognized that Benson and Flood are analogous insofar as both references are concerned with forming paper containers having a sidewall in which the contents of the container can be seen through. Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add printing to the outside surface of paper containers having a sidewall in which the contents of the container can be seen through in order to provide information to the user of the container such as scale mean, as taught by Flood.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to

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add printing to the outsider surface of the container of Benson in order to provide information to the user of the container, as taught by Flood.

9. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benson in view of Suzuki and McLaughlin (USPN 6,210,766) as applied to claim 20 and further in view of Flood (USPN 2,226,340).

Benson and Suzuki and McLaughlin teach a three layered blank having a polyethylene or polypropylene inner and outer layer and a central transparent paper stock layer as shown above with regards to claims 2, 8-12, 15-16, 20, 23, and 25. Note since the container comprises an inner and outer layer of polyethylene the container is formed of a multilayer, PE-based material. Benson and Suzuki fail to teach printing on the outer side of the container. However, Flood teaches that it is well known in the art to print on the outer surface of a paper container in order to provide the user of the container with information such as scale means (p.1, left hand column, lines 10-34). One of ordinary skill in the art would have recognized that Benson, Suzuki and Flood are analogous insofar as the references are concerned with forming paper containers. Therefore, it would have been obvious to one having ordinary

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skill in the art at the time Applicant's invention was made to add printing to the outside surface of paper containers in order to provide information to the user of the container such as scale mean, as taught by Flood.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add printing to the outside surface of the container of Benson and Suzuki in order to provide information to the user of the container, as taught by Flood.

10. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benson in view of Suzuki and McLaughlin (USPN 6,210,766) as applied to claim 20 and further in view of Clagett (USPN 2,689,424).

Benson, Suzuki, and McLaughlin teach all that is claimed in claim 20 as shown above, but fail to teach that printing is applied to the container so that it is only visible after the food has been at least partially taken out of the container. However, Clagett teaches a drinking container in which two images are created in different colors so that one image is present when the beverage is present and the other image is present when the beverage is no present in order to provide a unique aesthetic appeal to the beverage container (col.1, lines

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1-29). One of the prints of Clagett is only visible after the food has been taken out of the container (col.2, 1.32-49). One of ordinary skill in the art would have recognized that Benson and Clagett are analogous insofar as both references are concerned with forming drinking containers having a sidewall in which the contents of the container can be seen through.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add printing that is only visible after food is removed from the container in order to provide a unique aesthetic appeal to the drinking container, as taught by Clagett.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add printing that is only visible after food is removed from the container of Benson in order to provide a unique aesthetic appeal to the drinking container, as taught by Clagett.

11. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benson in view of Halligan et al (USPN 4,574,987).

Benson teaches all that is claimed in claim 1 as shown above, but fail to teach forming at least one of the layers of the container as a heat insulating layer. However, Halligan et

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al teach that paper containers are formed with a heat insulating layer such as a layer of air (col.3, 1.42-47) so that the container can be used to package food that is desired to remain colder or warmer than room temperature or the temperature at the surface of a person's hand (col.1, 1.5-24). One of ordinary skill in the art would have recognized that Benson and Halligan et al are analogous insofar as both references are concerned with forming paper containers for receiving food. Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add a heat insulating layer to a paper container for receiving food in order to provide insulation between a food that is desired to remain colder or warmer than room temperature and/or the temperature at the surface of a person's hand, as taught by Halligan et al.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add a heat insulating layer to the container of Benson in order to provide the container with the ability to be used to contain food that is desired to remain at a colder or warmer temperature than the outside environment, as taught by Halligan et al.

ANSWERS TO APPLICANT'S ARGUMENTS

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12. Applicant's arguments regarding the objections to the drawings and specification have been considered but they are moot since the objections have been withdrawn.

13. Applicant's arguments regarding the 35 U.S.C. 112 rejections of claims 1-43 of record have been considered but they are moot since the rejections have been withdrawn.

14. Applicant's arguments regarding the provisional double patenting rejections of claims 2-13, 15-26, and 30-43 over claims 1-33 of copending application number 10/630,378 have been fully considered but they are not persuasive.

In response to Applicant's argument that because the claims of application '378 is narrower and states "at least two layers" for the container wall it doesn't teach the broader claimed invention of "at least one layer". If a reference teaches anything within the scope of the claims, the reference teaches the claims.

15. Applicant's arguments regarding the 35 U.S.C. 102 rejections of claims 3-7, 13, 18-19, 26-28, 32-33, 38-41, and 43 as anticipated by Benson have been fully considered but they are not persuasive.

In response to Applicant's argument that Benson does not teach that the edges of the layer are fluid tight as claimed in claim 19, the edges of the layer form the bond that holds the container wall together, and since the container is used to contain a liquid, the edges of the wall must inherently at least be liquid tight, otherwise the container would not be able to hold the liquid. Note a liquid is a fluid, so if something is liquid tight, it is fluid tight.

In response to Applicant's argument that Benson fails to teach the limitations of claim 26, claim 26 merely requires that closed end is formed by connecting lower end sections of the wall. Benson teaches forming the closed end by connecting lower end sections of the wall via a bottom insert. Claim 26 does not exclude a bottom insert for connecting the lower end sections of the wall.

In response to Applicant's argument that Benson fails to teach that "the container is stable in the range of -50°C to +120°C", the limitation given its broadest reasonable interpretation claims that the container is stable at a temperature in the claimed range. The limitation does not require that the container be stable at every temperature within the range claimed, it just states that the container and material are stable at least in that range.

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16. Applicant's argument regarding claims 2, 3-12, 15-16, 23, and 26 over Benson in view of Suzuki have been considered but they are not persuasive.

In response to Applicant's argument that Benson does not teach all of the limitations of claim 40 and Suzuki does not cure the deficiencies, Benson teaches all of the limitations of claim 40 as shown above.

17. Applicant's argument regarding claims 17, 20-22, 24, and 34-36 over Benson in view of Suzuki and McLaughlin have been considered but they are not persuasive.

In response to Applicant's argument that Benson does not teach all of the limitations of claim 40 and Suzuki does not cure the deficiencies, Benson teaches all of the limitations of claim 40 as shown above.

In response to Applicant's argument that McLaughlin does not teach that the tube wall is transparent and therefore the combination does not teach the limitation of claim 36, the references must be taken as a whole. Benson and Suzuki teach that the three layers of the container are all transparent, therefore, when the printing is applied only on a portion of the

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container, the rest of the container would form a control window.

18. Applicant's argument regarding claim 29 over Benson in view of Meyer has been considered but they are not persuasive.

In response to Applicant's argument that Benson does not teach all of the limitations of claim 40 and Meyer does not cure the deficiencies, Benson teaches all of the limitations of claim 40 as shown above.

In response to Applicant's argument that Benson and Meyer fail to teach coloring of the material, Meyer teaches coloring the material by adding color effects to the material.

19. Applicant's argument regarding claim 30 over Benson in view of Flood has been considered but they are not persuasive.

In response to Applicant's argument that Benson does not teach all of the limitations of claim 40 and Flood does not cure the deficiencies, Benson teaches all of the limitations of claim 40 as shown above.

20. Applicant's argument regarding claim 31 over Benson in view of Suzuki and Flood has been considered but they are not persuasive.

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In response to Applicant's argument that Benson does not teach all of the limitations of claim 40 and Suzuki and Flood do not cure the deficiencies, Benson teaches all of the limitations of claim 40 as shown above.

21. Applicant's argument regarding claim 37 over Benson in view of Clagett has been considered but they are not persuasive.

In response to Applicant's argument that Benson does not teach all of the limitations of claim 40 and Clagett does not cure the deficiencies, Benson teaches all of the limitations of claim 40 as shown above.

22. Applicant's argument regarding claim 42 over Benson in view of Halligan has been considered but they are not persuasive.

In response to Applicant's argument that Benson does not teach all of the limitations of claim 40 and Halligan does not cure the deficiencies, Benson teaches all of the limitations of claim 40 as shown above.

Conclusion

23. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is

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reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

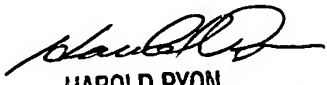
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher P Bruenjes
Examiner
Art Unit 1772
CPB
July 3, 2006


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772 7/5/06